

## § 6a.6652(g)-1

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mortgage requirements) shall be treated as meeting such requirements if each of the following provisions is complied with:

(i) The issuer in good faith attempted to meet all such requirements before the mortgages were executed. Good faith requires that the trust indenture, participation agreements with loan originators, and other relevant instruments contain restrictions that permit the financing of residences only in accordance with such requirements. In addition, the issuer must establish reasonable procedures to ensure compliance with such requirements. Such procedures include reasonable investigations by the issuer to satisfy such requirements.

(ii) Ninety-five percent or more of the lendable proceeds (as defined in § 6a.103A-2(b)(1)) that were devoted to owner-financing were devoted to residences with respect to which, at the time the mortgages were executed, all such requirements were met. In determining whether a person is a qualified veteran the issuer may rely on copies of the mortgagor's certificate of discharge indicating that the mortgagor served on active duty at some time before January 1, 1977, and stating the date on which the mortgagor left active service provided that neither the issuer nor its agent knows or has reason to believe that such affidavit is false. Where a particular mortgage fails to meet more than one of these requirements, the amount of the mortgage will be taken into account only once in determining whether the 95-percent requirement is met. However, all of the defects in the mortgage must be corrected pursuant to subdivision (iii).

(iii) Any failure to meet such requirements is corrected within a reasonable period after such failure is discovered. For example, failures can be corrected by calling the nonqualifying mortgage or by replacing the nonqualifying mortgage with a qualifying mortgage.

(2) *Nonmortgage eligibility requirements.* An issue of qualified veterans' mortgage bonds issued after July 18, 1984, which fails to meet the requirements of paragraph (g) of this section shall be treated as meeting such re-

quirements if each of the requirements of § 6a.103A-2(c)(2) (i) and (ii) is met.

(98 Stat. 901(26 U.S.C. 103A(j) (3) and (4)); 68A Stat. 917 (26 U.S.C. 7805))

[T.D. 7780, 46 FR 34314, July 1, 1981; 46 FR 37890, July 23, 1981, as amended by T.D. 7995, 49 FR 48297, Dec. 12, 1984]

### **§ 6a.6652(g)-1 Failure to make return or furnish statement required under section 6039C.**

(a) *Amount imposed.* In the case of each failure to meet the requirements of—

(1) Section 6039C, relating to information returns with respect to United States real property interests, or

(2) Section 6039C(b)(3), relating to statements to be provided to substantial investors in United States real property interests,

on or before the date prescribed therefor (determined with regard to any extension of time for filing), the person failing to meet such requirement shall pay \$25 for each day during which such failure continues.

(b) *Limitation*—(1) *Domestic corporations and nominees.* The maximum penalty which may be imposed under paragraph (a) of this section on a domestic corporation or nominee for failure to meet the requirements of section 6039C(a) for any calendar year is \$25,000.

(2) *Partnerships, trusts, estates and foreign corporations.* The maximum penalty which may be imposed on a partnership, trust, estate or foreign corporation for failure to meet the requirements of section 6039C(b) for any calendar year is \$25,000.

(3) *Foreign persons holding U.S. real property interests and nominees.* The maximum penalty which may be imposed on a foreign person holding a U.S. real property interest or on a nominee holding a U.S. real property interest for a foreign person for failure to meet the requirements of section 6039C(c) for any calendar year is the lesser of \$25,000 or 5 percent of the aggregate of the fair market value of the U.S. real property interests owned by such person at any time during such calendar year.

(c) *Definitions*—(1) *Fair market value.* The term “fair market value” as used in this section is defined in § 6a.897-1

(in the FEDERAL REGISTER 47 FR 41541, Sept. 21, 1982).

(2) *Failure.* The term “failure to meet the requirements of section 6039C” includes the failure to file a return for any calendar year on the date prescribed therefor (determined with regard to any extension of time for such filing), or the omission on a return of one or more items of information required by section 6039C and the regulations thereunder to be provided on the return. It also includes the failure to furnish a statement required by section 6039C(b)(3). The failure to furnish a return required under section 6039C(b)(1) and the failure to furnish a statement to a substantial investor as required by section 6039C(b)(3), are separate failures for purposes of paragraph (a) of this section. Also, each failure to provide a statement to each substantial investor is a separate failure for purposes of paragraph (a). Thus, if an entity has 100 substantial investors as defined in section 6039C and fails to furnish any of the required statements to substantial investors, there are 100 separate failures to furnish the required statement.

(3) *Aggregate of the fair market value of the United States real property interests.* The “aggregate of the fair market value of the U.S. real property interests” is the total of the fair market values of each U.S. real property interest owned at any time during the calendar year. Fair market value is determined as of December 31 of such year for property held at the end of the year and on the date of disposition for property disposed of during the year.

(d) *Attribution of ownership.* For purposes of calculating the penalty limitation under § 6a.6652(g)-1(b)(3) with respect to failure to meet the requirements of section 6039C(c), U.S. real property interests held by a partnership, trust, or estate shall be treated as owned proportionately by its partners or beneficiaries.

(e) *Exceptions—(1) Provision of security.* If a person otherwise required by section 6039C to file a return for a calendar year or furnish a statement to a substantial investor complies with the requirements of § 6a.6039C-5 relating to furnishing security in lieu of filing such return, or is exempt, by virtue of

§ 6a.6039C-5(f), from filing a return for such year with respect to its U.S. real property interests held, no penalty will be imposed under paragraph (a) of this section for failure to file such return or furnish such statement.

(2) *Showing of reasonable cause.* No amount shall be imposed under paragraph (a) of this section for a failure described in such paragraph if it is established to the satisfaction of the Director of the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155 or in the case of returns concerning the Virgin Islands, the Commissioner of the Bureau of Internal Revenue, Tax Division, Charlotte Amalie, St. Thomas, V.I. 00801, that such failure is due to reasonable cause and not to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, made under the penalties of perjury, containing a declaration by the person failing to make a return or furnish a statement under section 6039C setting forth all the facts alleged as reasonable cause. Whether reasonable cause is shown may depend upon the subsection of section 6039C under which the failure occurs. However, the fact that stock of a foreign corporation, or any other interest in any entity to which this section applies, is registered in bearer form does not constitute reasonable cause under this paragraph (e)(2) of this section for failure to comply with the requirements of section 6039C(b). Also, the fact that disclosure of ownership would contravene a secrecy law of any country does not constitute reasonable cause for failure to comply with the requirements of section 6039C(b). Where a return has been filed and there is an omission of one or more items of information required by section 6039C and the regulations thereunder, one of the facts to be considered in determining whether such failure is due to reasonable cause is the materiality of the item omitted.

(3) *Spouse or parent already filed with respect to same property.* If an individual files a return with respect to all U.S. real property interests held by such individual in accordance with § 6a.6039C-4(b), no penalty shall be imposed under this section on such individual's spouse

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or minor child for failure to file a return under § 6a.6039C-4 with respect to the same property.

(f) *Manner of payment.* The amount imposed under paragraph (a) of this section on any person shall be paid in the same manner as tax upon the issuance of a notice and demand therefor.

(g) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* Domestic corporation X is required under section 6039C (a) to make a return for calendar year 1982. X does not file such return on or before May 15, 1983 as required under § 6a.6039C-1(c). The failure to file the return for calendar year 1982 continues throughout calendar years 1983, 1984, 1985, and 1986. The failure to file is not due to reasonable cause and no security has been furnished in lieu of filing. The maximum penalty which can be imposed on X for failure to file the 1982 return is \$25,000, determined as follows:

	Penalty incurred in given year	Cumulative penalty for failure to file 1982 return
Total penalty incurred in 1983 (\$25 per day×230 days) .....	\$5,750	\$5,750
Total penalty incurred in 1984 (a leap year): (\$25 per day×366 days) .....	9,150	14,900
Total penalty incurred in 1985 (\$25 per day×365 days) .....	9,125	24,025
Total penalty incurred in 1986 (lesser of \$25 per day×365 days or \$975 (remaining penalty which may be imposed)) .....	975	25,000

*Example (2).* The facts are the same as in example (1) except that X also fails to file a return under section 6039C (a) for calendar year 1983. The failure to file its return for calendar year 1983 continues throughout calendar years 1984, 1985, 1986 and 1987. The total penalty which may be imposed on X for failure to file its return for calendar year 1983 is \$25,000. The amount of penalty which can be imposed on X in calendar years 1984, 1985, 1986 and 1987 is determined as follows:

	Penalty for 1982 failure	Penalty for 1983 failure	Total penalty for given year
Penalty incurred in 1984 (a leap year):			
For failure to file 1982 return (\$25 per day×366 days) .....	\$9,150	.....	.....
For failure to file 1983 return (\$25 per day×230 days) .....	.....	\$5,750	.....

	Penalty for 1982 failure	Penalty for 1983 failure	Total penalty for given year
Total .....	.....	.....	\$14,900
Penalty incurred in 1985:			
For failure to file 1982 return (\$25 per day×365 days) .....	9,125	.....	.....
For failure to file 1983 return (\$25 per day×365 days) .....	.....	9,125	.....
Total .....	.....	.....	18,250
Penalty incurred in 1986:			
For failure to file 1982 return (lesser of \$25 per day×365 days or \$975 (remaining penalty which may be imposed)) .....	975	.....	.....
For failure to file 1983 return (\$25 per day×365 days) .....	.....	9,125	.....
Total .....	.....	.....	10,100
Penalty incurred in 1987:			
For failure to file 1983 return (lesser of \$25 per day×365 days or \$1,000 (remaining penalty which may be imposed)) .....	.....	1,000	.....
Total .....	.....	.....	1,000

*Example (3).* Foreign corporation Y is required under section 6039C(b)(1) to make a return for calendar year 1982. In addition, Y is required under section 6039C(b)(3) to furnish statements to each substantial investor in U.S. real property interests. Y has 10 such substantial investors. Y does not file such return on or before May 15, 1983 as required under § 6a.6039C-1(c), nor does it furnish the required statements on or before January 31, 1983 as required under § 6a.6039C-3(h). The failure to file the return for calendar year 1982 and to furnish the required statements for 1982 continues throughout calendar years 1984 and 1985. The failure to meet the requirements of section 6039C(b) are not due to reasonable cause and no security has been furnished in lieu of filing. The total penalty which can be imposed on Y for failure to file the return and statements required under section 6039C(b) for calendar year 1982 is \$25,000. The amount of penalty incurred by Y in calendar year 1983 for failure to file the return and statements for calendar year 1982 is \$25,000, determined as follows:

Penalty incurred in 1982:	
For failure to file return (\$25 per day×230 days) .....	\$5,750
For each failure to furnish a statement required by section 6039C(b)(3) (\$25 per day×10 statements×the 334 days from February 1, 1983 to December 31, 1983 (\$83,500) but not more than \$19,250 (which when added to \$5,750 would total \$25,000)) .....	19,250

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Total ..... 25,000

Since Y has incurred the maximum penalty for failure to file its return and statements required for 1982 by the end of calendar year 1983, no further penalty for these failures is imposed.

*Example (4).* Under section 6039C(c) foreign person Y is required to make a return for calendar year 1982. Y does not file such return on May 15, 1983 and the failure is not due to reasonable cause. No security has been furnished in lieu of filing. All properties owned by Y in 1982 are U.S. real property interests. Y purchased property M in January 1982 when its fair market value was \$10,000. In March, Y purchased property N when its fair market value was \$15,000. In November, Y sold property M for \$20,000. The fair market value of property N on December 31, 1982, was \$20,000. The total of the fair market values of M and N (M as of the date of its sale and N as of December 31, 1982) is \$40,000. The maximum penalty which may be imposed on Y for failure to meet the requirements of section 6039C(c) for any calendar year is the lesser of \$25,000 or 5 percent of the aggregate of the fair market values of the U.S. real property interests owned by Y at any time during such calendar year. Since \$2,000 (5 percent of \$40,000) is less than \$5,750 (25 times 230 days, the number of days in calendar year 1983 for which the failure continues), the maximum penalty which may be imposed on Y in 1983 is \$2,000. Since the maximum penalty for the failure to file the 1982 return is incurred in 1983, no amount may be imposed for Y's continuing failure to file the return for calendar year 1982 during calendar years after 1983.

(h) *Effective date.* This section shall apply to 1980 and subsequent calendar years. The calendar year 1980 shall be treated as beginning on June 19, 1980 and ending on December 31, 1980.

[T.D. 7866, 48 FR 648, Jan. 6, 1983]

## PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Sec.

7.48-1 Election to have investment credit for movie and television films determined in accordance with previous litigation.

7.48-2 Election of forty-percent method of determining investment credit for movie and television films placed in service in a taxable year beginning before January 1, 1975.

7.48-3 Election to apply the amendments made by sections 804 (a) and (b) of the

Tax Reform Act of 1976 to property described in section 50(a) of the Code.

7.57(d)-1 Election with respect to straight line recovery of intangibles.

7.105-1 Questions and answers relating to exclusions of certain disability income payments.

7.105-2 Substantial gainful activity.

7.465-1 Amounts at risk with respect to activities begun prior to effective date; in general.

7.465-2 Determination of amount at risk.

7.465-3 Allocation of loss for different taxable years.

7.465-4 Insufficient records.

7.465-5 Examples.

7.704-1 Partner's distributive share.

7.936-1 Qualified possession source investment income.

7.999-1 Computation of the international boycott factor.

7.6039A-1 Information regarding carryover basis property acquired from a decedent.

7.6041-1 Return of information as to payments of winnings from bingo, keno, and slot machines.

AUTHORITY: 26 U.S.C. 7805, unless otherwise stated.

### § 7.48-1 Election to have investment credit for movie and television films determined in accordance with previous litigation.

(a) *Generally.* Under section 804(c)(3) of the Tax Reform Act of 1976 (Pub. L. 94-455, 90 Stat. 1595), any taxpayer who filed an action in any court of competent jurisdiction before January 1, 1976, for a determination of such taxpayer's rights to investment credit under section 38 of the Internal Revenue Code of 1954 with respect to any film placed in service in any taxable year beginning before January 1, 1975, may elect to have investment credit on all films placed in service in taxable years beginning before January 1, 1975, (except those subject to an election under section 804(e)(2) of the Act), determined as though section 804 of the Act (except section 804(c)(3) of the Act) had not been enacted.

(b) *Manner of making the election.* The election allowed by section 804(c)(3) of the Act may be made by a notification in the form of a letter signed by the taxpayer or an authorized representative of the taxpayer stating:

(1) The taxpayer's name, address, and identification number;